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**IN THE
COURT OF APPEALS OF INDIANA**

RONALD S. HOBBS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 18A05-0608-CR-460
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Robert L. Barnet, Judge
Cause No. 18C03-0601-FA-1

May 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Ronald S. Hobbs asks us to find two additional mitigating circumstances and then “reweigh the aggravating and mitigating circumstances and impose a sentence less than the maximum allowable sentence.” (Appellant’s Br. at 8.) Because the court did not abuse its discretion when it declined to find the two mitigating circumstances Hobbs raises on appeal, we find no error.¹ Therefore, we affirm.

FACTS AND PROCEDURAL HISTORY

In 2000, Hobbs lived with his wife, two daughters, and two step-daughters. The State charged Hobbs with four counts of child seduction as Class D felonies² and one count of child molesting as a Class A felony.³ Hobbs pled guilty to three counts of child seduction as Class D felonies in exchange for the State’s agreement to drop the other two charges. The three counts to which he pled guilty alleged that in October of 2000, when Hobbs was thirty-eight years old, he “engaged in fondling or touching with [his sixteen-year-old step-daughter] with the intent to arouse or satisfy the sexual desires of either the child or adult.” (Appellant’s App. at 14-16.)

The court accepted Hobbs’ plea and conducted a sentencing hearing. The court found three mitigators: Hobbs’ plea indicating acceptance of responsibility; Hobbs’ history of maintaining employment to support his family; and Hobbs’ “genuine remorse.” (*Id.* at 99.) The court also found three aggravators: Hobbs’ criminal history, including

¹ Hobbs argues only that the court would have balanced the aggravators and mitigators differently if it had found the two additional mitigators. He does not assert the court improperly weighed the aggravators and mitigators found. Accordingly, we do not review the appropriateness of Hobbs’ sentence in light of the aggravating and mitigating circumstances found.

² Ind. Code § 35-42-4-7.

³ Ind. Code § 35-42-4-3(a).

six felony and twelve misdemeanor convictions; Hobbs' failure to take advantage of prior opportunities for probation; and Hobbs' crime was "designed to take advantage of the difference in ages between the Defendant and the victim, 38 and 16." (*Id.*)

The court found the aggravators outweighed the mitigators and sentenced Hobbs to three years in the Department of Correction for each conviction. To support ordering all three sentences to be served consecutively, the court found Hobbs had been "in a position of trust and control with the victim" and had taken advantage of the age difference between himself and the victim. (*Id.* at 100.)

DISCUSSION AND DECISION

Hobbs argues the trial court should have given mitigating weight to his intoxication at the time of the three incidents that led to his convictions and to "the fact they were all very similar incidents which occurred within a short period of time." (Appellant's Br. at 8.) We disagree.

When a defendant challenges the trial court's findings of mitigating circumstances, we apply the following standard of review:

With respect to mitigating factors, it is within a trial court's discretion to determine both the existence and the weight of a significant mitigating circumstance. Given this discretion, only when there is substantial evidence in the record of significant mitigating circumstances will we conclude that the sentencing court has abused its discretion by overlooking a mitigating circumstance. Although the court must consider evidence of mitigating factors presented by a defendant, it is neither required to find that any mitigating circumstances actually exist, nor is it obligated to explain why it has found that certain circumstances are not sufficiently mitigating. Additionally, the court is not compelled to credit mitigating factors in the same manner as would the defendant. An allegation that the trial court failed to identify or find a mitigating circumstance requires the defendant on appeal to establish that the

mitigating evidence is both significant *and* clearly supported by the record.

Pennington v. State, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005) (internal citations omitted) (emphasis in original).

Hobbs asserts his alcoholism and intoxication at the time of his crimes should have been considered mitigating factors. Defendants are not permitted to raise on appeal mitigating circumstances they failed to present to the trial court. *Id.* Hobbs did not offer as mitigating circumstances his alcoholism or his intoxication at the time of the crimes. Therefore, he has waived such allegation. *Id.*

Waiver notwithstanding, we find no abuse of discretion in the court's failure to find his alcoholism or intoxication a mitigating circumstance. Hobbs told the court he had been treated for alcoholism and drug addiction "in the '80's." (Tr. at 2.) Hobbs testified he maintained sobriety for approximately six years before relapsing when he began having marital problems. Hobbs had at least eight alcohol-related convictions. Despite his relapse, he did not obtain additional help before seducing his step-daughter. As the court could have found his failure to seek help an aggravating factor, *see Bennett v. State*, 787 N.E.2d 938, 948 (Ind. Ct. App. 2003) ("this factor could also be considered an aggravating circumstance in that Bennett was aware that he had an alcohol problem and never sought help for it"), *trans. denied* 804 N.E.2d 746 (Ind. 2003), we cannot find an abuse of discretion in the court's failure to find in this evidence a mitigating circumstance. *See id.*

For the other mitigator Hobbs urges on appeal, he provides the following argument:

While each of the counts may be characterized as separate incidents which could allow for consecutive sentences, the fact they were all very similar incidents which occurred within a short period of time was another factor which should have been considered by the trial court in sentencing the defendant.

(Appellant's Br. at 8.) Hobbs does not explain why this factor should be mitigating. Nor does he cite authority to support his allegation. Accordingly, his argument is waived. *See* Ind. Appellate Rule 46(A)(8)(a). Waiver notwithstanding, it is not apparent why a court would find mitigation in the fact Hobbs' three crimes against his step-daughter were committed in a similar manner within the same month. The fact remains he seduced her on three separate occasions. We find no abuse of discretion. *See O'Connell v. State*, 742 N.E.2d 943, 952 (Ind. 2001) ("It is a well established principle that the fact of multiple crimes or victims constitutes a valid aggravating circumstance that a trial court may consider in imposing consecutive or enhanced sentences.").

Affirmed.

MATHIAS, J., and NAJAM, J., concur.